

## COMPLIMENTARY BREAKFAST

Notice #07-10

Sales and Use Tax

November 2007



- Complimentary breakfast food purchases are subject to sales and use tax

- Food and beverages have an independent value when sold to individuals who are not registered guests

**References:**

T.C.A. § 67-6-203  
*Nashville Clubhouse  
Inn v. Johnson* (TN  
COA 2000)

**INTRODUCTION**

This notice is intended to provide taxpayers and the general public with information concerning the sales and use tax liability related to food and beverages purchased by hotels to be provided "free" or "complimentary" to registered guests.

**Food and beverages purchased by a hotel are subject to sales and use tax when provided to registered guests at no additional charge if the hotel does not sell or otherwise make the food and beverages available to anyone other than registered guests.**

**Food and beverages purchased by a hotel can be purchased on a resale certificate when provided to registered guests and sold to individuals who are not registered guests.**

**DISCUSSION**

When a hotel does not sell or otherwise make the complimentary food or beverages available to individuals who are not registered guests, the hotel is considered the user and consumer of the food and beverages purchased. They are using these items in the performance of their room rental service and are therefore liable for sales and use tax when purchasing the food and beverages for the complimentary meals.

The question regarding the taxability of free or complimentary food and beverages provided to registered hotel guests was presented in *Nashville Clubhouse Inn v. Johnson*, 27 S.W.3d 542 (Tenn. Ct. App. 2000) *perm. app. denied*. In that case, the hotels operated restaurants and cocktail lounges that were open to the public. The court held that breakfasts and beverages that were seemingly provided at no charge to every hotel guest at a breakfast buffet were actually sold to the guests. The food and beverages that the hotels purchased were also sold to people who were not registered guests; therefore, the food and beverages had an independent value. The court found that in such case there was consideration because the costs of the breakfasts and beverages were included in the price of the room. In these situations, the food and beverages can be purchased on a resale certificate. Sales tax should be collected and remitted to the department when the food and beverages are sold to registered guests through the room rental and when sold to other individuals who are not guests.

The information provided here is current as of the date of publication but may change as a result of new statutes, regulations, or court decisions. While this notice is intended to be comprehensive, events and situations unanticipated by this notice may occur. In such cases you should contact the department or your tax professional for further guidance.